

CITY OFFICERS AND EMPLOYEES

Title 3

CITY OFFICERS AND EMPLOYEES¹

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CHAPTER I. IN GENERAL

Sec. 3.1. Eligibility for office.

No person, while holding any office or employment under the federal, state or county government, except the office of notary public, shall be eligible to any office under said city government. No person shall have any interest, direct or indirect, in any contract with or franchise from the city while holding any office under the city government. But stockholders in corporations having such relations with the city, may be eligible to membership on the city council, but shall not vote on or interfere directly or indirectly, with any matters or questions affecting a contract or franchise between such company and the city, or its right or duty under the same. If, while any person is holding any office under the city government, he shall cease to possess any or all of the qualifications, or become subject to any of the disqualifications herein prescribed, his office shall thereby become immediately vacant. No person, while in arrears to the city for money collected, shall be eligible to any office under the city government. (Acts 1899, Ch. 216, § 7; Priv. Acts 1901, Ch. 432, § 4; Priv. Acts 1968, Ch. 476, § 1)

Editor's note-Chapter 476, Priv. Acts 1968, pertaining to residence and voting qualifications of city employees and appointed officials (codified as § 3.1.1) repealed

¹ **Cross references**-Election of mayor, city council and city judge, Title 5; mayor and city council generally, Title 8; municipal boards and commissions, Title 9; general authority to create and fill offices, § 2.1(44); bonds of city officials, § 2.1(45); creation and discontinuance of offices not provided for by charter, § 2.8.

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conflicting prior acts; therefore, the editors, at the direction of the city, deleted from § 3.1, the former first sentence which read: "No person not being a legally qualified voter under the Charter of the City of Chattanooga shall be eligible to hold any position whatsoever in the city government, either by election or appointment."

(Paragraph 4 of the Amended Plan appended to the Agreed Order, dated 1-18-90, in the case of Brown v. Board of Commissioners, U.S.D.C., No. CIV-1-87-388)

Sec. 3.1.1. Employees and appointed officials required to be residents or legally qualified voters.

All employees of the city shall either be registered voters in the State of Tennessee, or eligible to vote in the State of Tennessee, except that those employees currently employed (as of January 18, 1990) and living outside the State of Tennessee shall be exempted from this provision.

Editor's note-This section is derived from Paragraph 31 of the Amended Plan appended to the Agreed Order, dated 1-18-90, in the case of Brown v. Board of Commissioners, U.S.D.C., No. CIV-1-87-388.

Sec. 3.2. Bonds and oaths of officers.

All officers of the city, before assuming the duties of office, shall enter into bond, as now required by law, and take and subscribe an oath that they possess the qualifications and are free from the disqualifications prescribed by this Act [section 3.1 of this Charter] and to faithfully discharge the duties of their respective offices, and such other oath or affirmation as may be now or hereafter prescribed by ordinance. (Priv. Acts 1901, Ch. 432, § 5)

Cross reference-Authority to establish bond of officers, § 2.1(45).

Sec. 3.3. Officers to serve until successors are elected and qualified.

All city officers shall serve until their successors are appointed, or elected and qualified. (Priv. Acts 1901, Ch. 432, § 4)

Sec. 3.4. (RESERVED)

Sec. 3.5. Military leave.

Any employee of the City of Chattanooga who shall enter the military or naval service of the United States Government during the time designated by the president of the United States as a period of emergency shall be given a leave of absence for the duration of said military or naval service, and upon the termination of said service the mayor, if said position exists. If said position has been abolished, he shall be given a position of equal rank and at a salary of not less than that which he received when given said leave of absence for

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military or naval service during such emergency. And said employee shall retain all rights and benefits which he had under any civil service or tenure law of said city, and shall retain all rights and benefits which he had under any insurance and pension law of the city at the time he entered said service of the United States Government, and shall be given credit for the years spent in the military or naval service in computing the time served for pension purposes. (Priv. Acts 1941, Ch. 492, § 1)

(Paragraph 3 of the Amended Plan appended to the Agreed Order, dated 1-18-90, in the case of Brown v. Board of Commissioners, U.S.D.C., No. CIV-1-87-388)

Cross reference-Military leave for employees of board of education, § 17.6.

Sec. 3.6. Minimum salaries of City Judges.

The annual salaries for the the city judges, respectively, shall each be not less than the annual salary paid to any of the city council, which salaries shall be payable to each of them in equal semimonthly installments. (Priv. Acts 1965, Ch. 237, § 2; Priv. Acts 1970, Ch. 343, § 2)

Editor's note-Priv. Acts 1970, Ch. 343, § 2, amended the acts codified as § 3.6, by substituting "salaries" in lieu of "salary" and "judges" in lieu of "judge."

(Paragraph 2 of the Amended Plan appended to the Agreed Order, dated 1-18-90, in the case of Brown v. Board of Commissioners, U.S.D.C., No. CIV-1-87-388)

Cross references-City attorney generally, § 3.61 et seq.; city attorney's salary to be fixed by council, § 3.64; city judges generally, § 4.20 et seq.; salary of city judges to be paid monthly, § 4.23.

Secs. 3.7 -- 3.17. Reserved.

CHAPTER II. RECALL

Sec. 3.18. Authorized; procedure.

The mayor, the city judges, and the members of the city council of the City of Chattanooga elected or appointed under this Charter may be removed from office by the qualified voters of said city. The procedure to effect such removal shall be as follows:

In the case of an official elected at large, a petition signed by qualified voters equal in number to at least fifty per centum (50%) of the entire vote for all candidates for the office of mayor cast at the last preceding general municipal election, demanding an election of a successor of the person sought to be removed shall be filed with the commissioners of election of Hamilton County, which petition shall contain a general statement of the grounds for which the removal is sought. In the case of an official elected by district, the petition must be signed by qualified voters equal in number to at least fifty per centum (50%) of the

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entire vote for all candidates for the office of mayor cast in that district at the last preceding general municipal election. The signatures to the petition need not all be appended to one paper, but each signer shall add to his signature his place of residence, giving the ward, street, and number, or the location of his real estate, if entitled to vote by reason of property qualifications. Within fifteen (15) days from the date of filing such petition, said board of election commissioners shall examine the same and ascertain whether it be signed by the required number of persons and whether such persons are qualified voters as shown by the registration books, and they shall attach to said petition their certificate showing the result of such examination. If by the said certificate the petition is shown to be insufficient, it may be amended within ten (10) days from the date of said certificate. The board of election commissioners shall, within fifteen (15) days after such amendment, make like examination of the amended petition; and if their certificate shall show the same to be insufficient, it shall be returned to the person filing same, without prejudice, however, to the filing of a new petition to the same effect. If by their certificate the petition is shown to be sufficient, the said board of election commissioners shall at once order and fix a date for holding said election not less than thirty (30) days nor more than sixty (60) days from the date of their certificate showing that a sufficient petition is filed. The commissioners of election shall make or cause to be made publication of notice and all arrangements for holding such election, and the same shall be conducted, returned and the result thereof declared, and the expenses thereof paid in all respects as are other city elections, except that a primary election shall not be required for the nomination of candidates at such removal election.

The successor of any officer so removed shall hold office during the unexpired term of his predecessor. Any person sought to be removed may be a candidate to succeed himself, and unless he request otherwise in writing the said commissioners of election shall place his name on the official ballot without nomination. In any such removal election the candidate receiving the highest number of votes shall be declared elected. At such election, if some other person than the incumbent receives the highest number of votes, the incumbent shall therefrom be deemed removed from office upon qualification of his successors. In case the party who receives the highest number of votes shall fail to qualify within ten (10) days after receiving notification of election, the office shall be deemed vacant. The said method of removal shall be cumulative and additional to the method heretofore existing by law. (Priv. Acts 1911, Ch. 10, § 25; Priv. Acts 1911, Ch. 126, § 3; Priv. Acts 1913, Ch. 301, § 8; Priv. Acts 1917, Ch. 432, § 2; Priv. Acts 1939, Ch. 573, § 1; Ord. No. 8936, § 1(2), 4-26-88; Ord. No. 9435, § 1(2), 8-21-90)

Editor's note-Sections 8-47-101 through 8-47-126 of the Tennessee Code Annotated provide an alternate procedure for the removal of public officers.

Secs. 3.19 -- 3.34. Reserved.

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CHAPTER III. PENSIONS AND DEATH BENEFITS²

ARTICLE 1. GENERALLY

. 1965 GENERAL PENSION SYSTEM³

Sec. 3.35. Plan established.

There be and is hereby created a General Pension System for certain officials and employees of the City of Chattanooga, to be known and referred to as "General Pension Plan." (Priv. Acts 1965, Ch. 254, §2)

Sec. 3.36. Contents of plan.

The General Pension Plan created by this Act [article] shall contain the articles and sections as hereinafter designated. (Priv. Acts 1965, Ch. 254, § 3)

Sec. 3.37. Definitions.

As used herein the following words and phrases shall have the meaning indicated, unless otherwise defined or required by the context: (Priv. Acts 1965, Ch. 254, § 3(1))

- (1) Plan shall mean the "General Pension Plan" as contained herein. (Priv. Acts 1965, Ch. 254, § 3(1.01))
- (2) Former plan shall mean any other pension plan created for the benefit of employees of the City of Chattanooga now in existence, whether open or closed to current or further participation, including but not limited to the Employees' Insurance and Pension Fund created by Chapter 678 of the Private Acts of 1937; the Department of Education Insurance and Pension Fund created by Chapter 221 of the 1937 Private Acts; Salaried Employees'

² **Cross reference**-Pensions for policemen and firemen, § 13.64 et seq.

³ **Editor's note**-It should be noted that the parenthetical history notes following the various subsections of this article contain the citations of the sections originally adopted as a plan by Chapter 254 of the private acts of 1965.

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Insurance and Pension Fund created by Chapter 298 of the 1961 Private Acts; Officials Pension System created by Chapter 300 of the 1961 Private Acts; and all Acts amendatory of any of said Acts. (Priv. Acts 1965, Ch. 254, § 3(1.02))

- (3) Board of trustees or board or trustees shall mean the board of trustees appointed in accordance with Article 8 [section 3.44 hereof] charged with the administration of the Plan as provided in Articles 8 and 10 [sections 3.44 and 3.46 hereof]. (Priv. Acts 1965, Ch. 254, § 3(1.03) as the same was amended by Paragraph 32.

(Paragraph 32 of the Amended Plan appended to the Agreed Order, dated 1-18-90, in the case of Brown v. Board of Commissioners, U.S.D.C., No. CIV-1-87-388)

- (4) City council shall mean the governing body of the City of Chattanooga. (Priv. Acts 1965, Ch. 254, § 3(1.04); Ord. No. 9766, § 1(7), 8-11-92)

- (5) City shall mean the City of Chattanooga, Tennessee, a Municipal Corporation chartered under the laws of the State of Tennessee. (Priv. Acts 1965, Ch. 254, § 3(1.05))

- (6) Employee shall mean any person regularly employed by the city and paid on an hourly basis or on a weekly, semimonthly or monthly salary (but not including temporary or seasonal employees, or person rendering a service under a contract) whether employed on a full time or a part-time basis; and shall also include any person who is a hired official of the city and any person who is an official of the city elected by popular vote; provided, however, the term "employee" shall not include any person employed by the city in the Department of Fire and Police who is eligible for or is participating in the Firemen's and Policemen's Insurance and Pension Fund, created by Chapter 165 of the 1949 Private Acts, as amended [Title 13, Chapter IV, hereof], or any person who is eligible for or who is participating in the Tennessee Teachers Retirement System, as contained in Section 49-1501, et seq. [repealed], of the Tennessee Code Annotated. In all cases of doubt, the trustee shall determine whether or not a person is an employee as herein defined. (Priv. Acts 1965, Ch. 254, § 3(1.06); Ord. No. 7408, § 1(2), 8-22-78)

- (7) Participant shall mean any employee who is a participant as provided in Article 2 [3.38 hereof], or a former employee who completed five (5) years of credited service and thereby has a vested interest in the general pension plan. (Priv. Acts 1965, Ch. 254, § 3(1.07); Priv. Acts 1967, Ch. 169, § 2; Ord. No. 10739, § 1(1), 8-18-98)

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- (8) Participant in a former plan shall mean any employee who, on the day prior to the effective date, was covered under a former plan or then had a right to receive a benefit from a former plan. (Priv. Acts 1965, Ch. 254, § 3(1.08))
- (9) Retired participant shall mean any participant who is retired from the city and is entitled to receive retirement benefits provided by the plan. (Priv. Acts 1965, Ch. 254, § 3(1.09))
- (10) Credited service shall mean the length of time a person participated in this plan or any former plan prior to the date as of which credited service is being determined. Credited service shall be expressed in years and a decimal fraction of a year based on completed calendar months. Credited service shall include that period of time that such person was an employee, whether continuous or not, while a former plan(s) was in force and he was not a participant in such former plan(s); but it shall not include any time a person is on leave of absence without pay or for any time for which a refund was paid in accordance with Section 4.98 [Section 3.45(3) hereof]. Such credited service for any period of time that he was not a participant will be granted only if and on the condition that the employee pay to the city an amount as determined in accordance with the provisions for reinstatement of prior service (Section 4.09) [Section 3.45.1 hereof], the social security law. (Priv. Acts 1965, Ch. 254, § 3(1.10); Priv. Acts 1967, Ch. 169, § 3; Priv. Acts 1968, Ch. 430, § 1; Priv. Acts 1971, Ch. 137, § 5; Ord. No. 7408, § 1(3), 8-22-78)
- (11) Earnings shall mean the total compensation paid by the city to an employee by a weekly, semimonthly or monthly salary for his personal services that are subject to federal income tax but excluding any payment for personal services made by virtue of any contract. (Priv. Acts 1965, Ch. 254, § 1(1.11); Ord. No. 8688, § 1(23), 8-19-86)
- (12) Average shall mean an arithmetic average determined for the highest paid three (3) full calendar years of a participant preceding the date as of which such average is being determined, or based on such lesser number of full calendar years of credited service actually completed by the participant. (Priv. Acts 1965, Ch. 254, § 3(1.12); Priv. Acts 1972, Ch. 402, § 1)
- (13) Effective date shall mean the effective date of the plan which shall be January 1, 1965. (Priv. Acts 1965, Ch. 254, § 3(1.17))

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- (14) Normal retirement date shall mean the first day of the month next following the sixty-second (62nd) birthday of a participant. (Priv. Acts 1965, Ch. 254, § 3(1.18))
- (15) Beneficiary shall mean the recipient or recipients, last designated by the participant in writing on form acceptable to the board who shall receive any death benefits payable under the plan. (Priv. Acts 1965, Ch. 254, § 3(1.19))
- (16) Plan year shall mean the fiscal year adopted from time to time by the city; but the first plan year shall mean the eighteen (18) month period ending June 30, 1966. (Priv. Acts 1965, Ch. 254, § 3(1.20))
- (17) Fund shall mean the cash or other property held and maintained in trust in accordance with Article 10 [section 3.46] hereunder and Section 3 of this Act [Sections 3.36 through 3.47 hereof]. (Priv. Acts 1965, Ch. 254, § 3(1.21))
- (18) Early retirement date shall mean the first day of the month next following the fifty-fifth (55th) birthday of a participant; provided that if the sum of a participant's age and years of credited service is at least eighty (80), the early retirement date shall be the first day of the month after the participant attains said eighty (80) years of age and credited service. (Priv. Acts 1965, Ch. 254, § 3(1.22); Priv. Acts 1967, Ch. 169, § 4; Ord. No. 10739, § 1(1), 8-18-98; Ord. No. 11011, § 1(1), 5-9-00)
- (19) Primary insurance amount shall mean the amount payable to a person at sixty-two (62) under the social security law. (Priv. Acts 1967, Ch. 169, § 5; Ord. No. 8688, § 1(3), 8-19-86)
- (20) Refund shall mean a refund of a participant's contributions in lieu of all other benefits to which he may be entitled, payable one year after a participant's termination of employment as an employee or at such earlier date approved by the board of trustees, together with interest at the refund interest rate from the date of termination to the date the refund is to be made. (Ord. No. 7408, § 1(4), 8-22-78)
- (21) Refund interest rate shall mean the rate of six (6) per cent per annum. (Ord. No. 9766, § 1(3), 8-11-92)
- (22) Part-time employee shall mean an employee whose job description provides for one thousand (1,000) hours per year or more is eligible to be a participant, but this term shall not apply to an official of the city elected by popular vote who is also eligible to be a participant. (Ord. No. 11011, § 1(4), 5-9-00)

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Sec. 3.38. Conditions of eligibility.

(a) Each employee's participation in this plan shall commence on the date of employment. Once an employee has become a participant such employee shall continue to be a participant as long as he or she continues to be an employee, subject to the provisions of this plan. Participation in the plan shall be a condition of the employment of each official or employee. (Priv. Acts 1965, Ch. 254, § 3(2.01); Ord. No. 7408, § 1(16), 8-22-78; Ord. No. 8688, § 1(5), 8-19-86)

(b) Each employee hired after February 1, 1979, shall be a participant of this plan as a condition of the employment. Each such employee's participation shall commence with the first payroll period. (Ord. No. 7408, § 1(6), 8-22-78; Ord. No. 10084, § 1(6), 8-16-94)

(c) Once an employee has become a participant he shall continue to be a participant as long as he continues to be an employee. (Ord. No. 7408, § 1(6), 8-22-78)

Sec. 3.39. Financing of plan.

(1) Employee contributions. Each participant shall pay to the city by payroll deduction an amount which shall be two percent (2%) of their earnings. Employee contributions shall be payable by a participant each payroll period during which he or she is a participant. The City Council, in its discretion, after, and only after, a recommendation has been received from the board of trustees, may by ordinance passed on three (3) separate readings, increase or decrease such employee contributions on or after July 1, 1969, and annually thereafter; provided, however, that such increase or decrease specified in said ordinance is the same as recommended by the board of trustees and is not inconsistent with any recommendation or report rendered by a qualified and accredited actuary as required by Section 3.02 [subsection (2) below]. (Priv. Acts 1965, Ch. 254, § 3(3.01); Priv. Acts 1967, Ch. 169, § 8; Ord. No. 7408, § 1(7), 8-22-78; Ord. No. 9766, § 1(7), 8-11-92; Ord. No. 10084, § 1(2), 8-16-94)

(2) City contributions. The city shall contribute monthly to the fund for the first plan year an initial amount equal to nine per cent (9%) of the annual payroll of participants, such percentage being known as the "city contribution rate." The city must also contribute, commencing with the fiscal year of 1966-67, an amount that will amortize the past service liabilities over a period not in excess of thirty (30) years from December 31, 1978. Thereafter the city contribution rate applicable for any plan year shall be determined actuarially on the basis of an annual actuarial valuation of the plan made as of December 31 in the preceding plan year. The city contribution rate, and the past service liability, shall be determined by a qualified or accredited actuary, selected by the board of trustees, according to accepted and sound actuarial principles, methods and actuarial assumptions. Such city contributions, as are so determined by said actuary and when approved by the board of

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trustees and certified to the personnel director on or before June 1, must be appropriated by the city in the annual budget ordinance for the immediately following fiscal year. (Priv. Acts 1965, Ch. 254, § 3(3.02); Priv. Acts 1967, Ch. 169, § 9; Priv. Acts 1972, Ch. 402, § 2; Ord. No. 7408, § 1(7), 8-22-78; Ord. No. 9766, § 1(7), 8-11-92)

(3) City to levy tax. The city is hereby empowered, authorized, and required to levy a sufficient annual tax upon all taxable property and taxable privileges within the City of Chattanooga for the purpose of raising revenue in order to make its contributions to the plan and for the payment of pensions to participants in the plan, and it shall appropriate same for such purposes. (Priv. Acts 1965, Ch. 254, § 3(3.03); Priv. Acts 1967, Ch. 169, § 10; Priv. Acts 1967, Ch. 169, §§ 8-10; Priv. Acts 1972, Ch. 402, § 2; Ord. No. 7408, § 1, 8-22-78)

(4) Picking up of contributions. Notwithstanding the provisions hereof employee contributions may be "picked up" by the city pursuant to Section 414(h) of the Internal Revenue Code. (Ord. No. 9766, § 1(5), 8-11-92)

Sec. 3.40. Benefits; conditions.

(1) Application forms. Payment of all benefits under the plan shall be subject to written application by the participant or beneficiary, as the case may be, submitted in such form as the board may direct from time to time. (Priv. Acts 1965, Ch. 254, § 3(4.01))

(2) Normal retirement-conditions. Each participant in the employment of the city on his normal retirement date shall be eligible to retire on that date and to receive a benefit as provided in Section 5.01 [section 3.41 hereof]. (Priv. Acts 1965, Ch. 254, § 3(4.02))

(3) Early retirement, vesting-conditions. A participant who has at least five (5) years of credited service as provided in this plan and whose employment is terminated for whatever reason, including resignation or for cause, may elect not to receive a refund and thereby be eligible for any of the benefits provided under this plan. (Priv. Acts 1965, Ch. 254, § 3(4.03); Priv. Acts 1967, Ch. 169, § 1; Priv. Acts 1972, Ch. 402, § 4; Ord. No. 7408, § 1(8), 8-22-78; Ord. No. 10739, § 1(1), 8-18-98)

(4) Death before retirement benefits are payable. If a participant dies before he has completed five (5) years of credited service and before he has attained age 62, his beneficiary shall receive a refund of all the deceased participant's contributions to the plan, without interest, payable within fifteen (15) days after date of death. If a participant dies after he has completed five (5) years of credited service or after he has attained age 62, any option he may have elected, in lieu of his otherwise retirement benefit, shall be payable as though he had been entitled to have such optional benefit commence on his date of death; and in the event such a participant has not elected any option prior to his death, a benefit shall be payable to the deceased participant's surviving spouse, if any, as though he had elected

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Option A. However, a beneficiary entitled to receive any optional benefit in accordance with this section [subsection] shall be eligible to elect to receive a full refund, without interest, of the deceased participant's contributions to this plan in lieu of all other benefits payable in accordance with this section [subsection], or may elect to receive a monthly benefit payable for life to commence at or after age 62 which has an actuarial value equal to and in lieu of the amount of optional benefit to which she is otherwise entitled. (Priv. Acts 1965, Ch. 254, § 3(4.04); Priv. Acts 1967, Ch. 169, § 12; Ord. No. 10739, § 1(1), 8-18-98)

(5) Death after retirement benefits are payable. No death benefit shall be payable to a participant's beneficiary under the plan other than a refund of the amount by which the deceased participant's contributions exceed benefits that have been paid to him or his beneficiary in the case of a participant who dies after retirement benefits are payable, unless an optional form of retirement benefit has been elected which specifically provides for another method of payment. (Priv. Acts 1965, Ch. 254, § 3(4.05))

(6) Disability pensions.

- (a) The board of trustees shall establish a disability pension plan for persons who become disabled in the line of duty or not in the line of duty. The trustees may fulfill this obligation by purchasing a commercial disability insurance policy, by establishing a self-funded disability plan administered by an insurance company or other qualified administrator, or by any combination thereof. This disability program may provide for partial disability payments for employees who recover sufficiently to become gainfully employed, but who are not recovered sufficiently to return to their normal employment or occupation.
- (b) For the purposes hereof, the phrase "disabled in the line of duty" shall generally relate to those disabilities proximately caused by acts or incidences occurring as a result of employment with the city; however, the trustees may purchase insurance policies with different definitions. The trustees are also authorized to adopt a more specific definition of disability with respect to a self-funded program.
- (c) For the purposes hereof, the phrase "disabled not in the line of duty" shall refer to those disabilities that do not qualify as "disabled in the line of duty." The trustees may purchase insurance policies with different definitions of "disabled not in the line of duty" or may establish a more specific definition with respect to a self-funded program.
- (d) For the purposes hereof, the words "disabled" or "disability", shall refer to a medically determinable bodily injury, disease, or condition or mental disorder

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so that during the continuation thereof the person is unable to perform the duties of his occupation or employment. The trustees may purchase insurance policies with different definitions, including definitions of "partial disability", or adopt more specific definitions in a self funded disability program.

- (e) For the purposes hereof, the phrases "partial disability" or "partially disabled" shall refer to those medically determinable bodily injury, disease, or condition or mental disorder which prevents a person from following his normal employment or occupation, but which does not disable the employee from other employment or occupations for which he or she is qualified by reasons of education, training, or experience or for which he or she can be reasonably trained. The trustees may purchase insurance policies with different definitions or adopt a more specific definition in a self funded disability program.
 - (f) Employees who become totally disabled as a result of an injury in the line of duty continue to accrue credited service for those period of time in which they are totally disabled. The accrual of such credited service shall end at the normal retirement date of the employee.
 - (g) Except to the extent otherwise provided by any policy or self-funded program, no employee shall be entitled to disability benefits under the section if the disability may be corrected by competent medical treatment, and said employee fails or refuses to be so treated. Employees may be required to undergo medical examinations by physicians selected by the insurance carrier or Trustee to establish eligibility for a disability pension. If a disability pension is approved, employees shall thereafter be subject to periodic medical examinations by physicians selected by the Trustees or the insurance carrier to maintain their eligibility for disability pension payments.
- (Ord. No. 9766, § 1(2), 8-11-92; Ord. No. 10739, § 1(1), 8-18-98; Ord. No. 11011, § 1(9), 5-9-00)

(7) Physical examination. The trustees or insurance carrier, before granting any disability pension, may require the applicant to submit to a physical examination by one or more physicians designated by said trustees or insurance carrier. Each person drawing any disability pension shall be subject to periodic examination by a physician selected by the trustees or insurance carrier at the expense of the fund or carrier. (Ord. No. 9766, § 1(2), 8-11-92)

(8) Other termination of employment. If the employment of a participant is terminated for any reason, and he or his beneficiary is not eligible to receive a benefit under Sections 4.02, 4.03, 4.04, 4.05 or 4.06 [subsections (2)-(6) above], he shall receive a refund

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without interest of his contributions to this plan, and any former plan, without interest, payable ninety (90) days thereafter, if he so requests. (Priv. Acts 1965, Ch. 254, § 3(4.08); Priv. Acts 1967, Ch. 169, §§ 11-13; Priv. Acts 1972, Ch. 402, § 4; Ord. No. 7408, § 1, 8-22-78)

Sec. 3.41. Benefits; methods of calculation.

(1) Normal retirement benefit. Any participant may upon retirement at his or her normal retirement date or early retirement date receive as an annual pension, payable in monthly installments beginning upon the last day of the first month following retirement and on the last day of each month thereafter during his lifetime, the sum of two percent (2%) of average earnings multiplied by years of credited service up to twenty (20) years plus one percent (1%) of average earnings multiplied by years of credited service in excess of twenty (20) years. Provided that any employee who shall be vested as of the effective date of this amendment may have his or her normal retirement benefit calculated pursuant to the provisions of §5.01.1 [§3.41.1], but the remaining applicable provisions of this Section 5.01 [3.41] shall apply. (Ord. No. 11011, § 1(5), 5-9-00)

(2) Early retirement benefit. A participant upon retirement on their early retirement date, shall as they may elect, receive either (a), (b), or (c) as follows:

- (a) A monthly deferred early retirement benefit, which shall be payable on his normal retirement date, provided he is then living and on the first day of each month thereafter during his lifetime, computed in the manner set forth in §5.01[3.41(1)] hereof, except that such computation shall be made as of his early retirement date.
- (b) An immediate early retirement benefit shall be payable on the last day of the month after retirement and monthly thereafter during their lifetime, the amount of which shall be the amount of the benefit provided in subparagraph (a) above reduced by two and one-half divided by twelve ($2.5 \div 12$) of one percent (1%) thereof for each full month in the period of time between their early retirement date and their normal retirement date. However, if the sum of the participant's age and years of credited service is at least eighty (80) at the time of retirement, there shall be no reduction in the immediate early retirement benefit. (Ord. No. 11011, § 1(2), 5-9-00)
- (c) Provided that any participant who shall be vested upon the effective date hereof, may have his or her early retirement benefits calculated pursuant to Section 5.02.1 [3.41.1(2)]. The remaining applicable provisions of this Section 5.01 [3.41] shall apply to employees selecting the calculation of benefits pursuant to §5.02.1 [3.41.1(2)].

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(3) Reduction of benefits. Notwithstanding any provision in this plan to the contrary, any benefit payable to the participant determined in accordance with this section on account of service as an employee of the city shall be reduced actuarially to reflect any pension benefit or other benefit attributed to the same service and payable from any other pension plan (other than Social Security), including but not limited to labor union pension plan(s), to which the city has contributed and under which an employee has a right to receive a benefit. The actuarial method to be used to effect the actuarial reduction shall be to determine the benefit which has the same single sum value as the single sum value of pension benefits otherwise payable under this plan less the single sum value of the pensions received from said other pension plan. (Ord. No. 7408, § 1(10), 8-22-78)

(4) Cost-of-living adjustments to pension benefits. Effective January 1, 2000, any benefit payable under this plan to or on account of a retired participant shall be increased by a three percent (3%) cost-of-living adjustment and such benefits shall be increased each subsequent year on January 1 by three percent (3%); provided that the City Council may by ordinance upon recommendation from the Board of Trustees of the General Pension, and upon receipt of a report of the actuarial consequences of a change either increase or decrease future cost of living increases for any subsequent year. Once a cost-of-living benefit has been added to a benefit, it shall never be reduced thereafter. Provided, further, that the cost of living increase payable to any surviving beneficiary of a participant receiving optional benefits shall be determined by multiplying the applicable cost-of-living percentage by the benefit payable to the participant at the time of his death and the benefit payable to the beneficiary shall thereafter be adjusted in accordance with the applicable cost-of-living percentage payable on the optional benefits received by the beneficiary commencing on the January 1 following the participant's date of death. (Priv. Acts 1965, Ch. 254, § 3(5.03); Ord. No. 7408, § 1(11), 8-22-78; Ord. No. 11011, § 1(2), 5-9-00)

(5) Transfer to Firemen's and Policemen's Insurance and Pension Plan. Notwithstanding any provisions to the contrary, the General Pension Plan (Pr. Acts 1965, Ch. 165, as amended) is hereby amended to provide that a Participant in the Firemen's and Policemen's Insurance and Pension Plan who has transferred employment from the provisions of the General Pension Plan shall have the right to have his service under the General Pension Plan vested if it amounts to five (5) years or more and said Participant has more than five (5) years credited service under the Firemen's and Policemen's Insurance and Pension Plan. Such employee shall be entitled to receive, if no longer employed by the City, a proportionate pension from the General Pension Plan based upon either the Early Retirement or Normal Retirement Provisions, provided such employee is eligible to retire under either of such provisions. Such pension shall be calculated according to salary history and method used at the time of such transfer from the General Pension Plan. If a Participant leaves the employment of the City with less than five (5) years credited service in each plan, unless disabled in the line of duty or entitled to any pension benefits under either plans, then said person shall receive a Refund of the contributions made by such person to either or both

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of said pension plans. (Ord. No. 8688, § 1(2)(b)(c), 8-19-86; Ord. No. 10084, §§ 1(1) & 1(2), 8-16-94)

[Sec. 3.41.1. Benefits; method of calculation.]

(1) Normal retirement benefit. A participant, upon retirement on his normal retirement date, shall receive a monthly retirement benefit which shall be payable on the last day of the month after retirement and on the last day of each month thereafter during his lifetime. Unless an optional benefit under Article 6 [section 3.42 hereof] is selected, the amount of such monthly benefit, computed as of his normal retirement date, shall be one-twelfth (1/12) of (a) multiplied by (b) as follows:

- (a) Sixty per cent (60%) of average earnings, less fifty per cent (50%) of any primary insurance amount payable to him as a benefit under the Social Security law at age sixty-two (62), but not including that portion of Social Security benefits attributable to his having a spouse and/or dependents. If a participant has credited service at retirement in excess of twenty-five (25) years, the sixty per cent (60%) in the preceding sentence will be increased in increments of one per cent (1%) for each full year of such credited service in excess of twenty-five (25) years. (Ord. No. 11011, § 1(6), 5-9-00)
- (b) Credited service not in excess of twenty-five (25) years divided by twenty-five (25). The amount of such primary social security shall be computed by the board of trustees in accordance with the method by which the primary insurance amount is determined under the social security law as such law existed on the date of termination of the participant's employment; except that the primary insurance amount shall be based on the amount of his average earnings on such date, and shall be assumed to commence on such date; provided further, however, that if the participant proves to the satisfaction of the board of trustees that the actual amount of his monthly primary social security, not reduced by reason of any earnings, is less than the amount computed by the board of trustees, then the board shall thereupon adjust upward his benefit provided by this plan to reflect appropriately his actual amount of primary social security. (Priv. Acts 1965, Ch. 254, § 3(5.01); Priv. Acts 1967, Ch. 169, § 14; Priv. Acts 1972, Ch. 402, § 3; Ord. No. 8688, § 1(4), 8-19-86; Ord. No. 11011, § 1(7), 5-9-00)

(2) Early retirement benefit. A participant, upon retirement on his early retirement date, shall as he may elect, receive either (a) or (b), as follows:

- (a) A monthly deferred early retirement benefit, which shall be payable on his normal retirement date, provided he is then living, and on the first day of each month thereafter during his lifetime, computed in the manner set forth in

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Section 5.01 [section 3.41(1) hereof], except that such computation shall be made as of his early retirement date and the deduction for social security shall be based upon an estimate of the primary insurance amount payable at age sixty-two (62), subject to adjustment of future payments based upon the primary insurance amount actually payable at age sixty-two (62). (Ord. No. 10084, § 1(4), 8-16-94)

- (b) An immediate early retirement benefit shall be payable on the last day of the month after retirement and monthly thereafter during their lifetime, the amount of which shall be the amount of the benefit provided in subparagraph (a) above reduced by two and one-half divided by twelve ($2.5 \div 12$) of one percent (1%) thereof for each full month in the period of time between their early retirement date and their normal retirement date. However, if the sum of the participant's age and years of credited service is at least eighty (80) at the time of retirement, there shall be no reduction in the immediate early retirement benefit (Priv. Acts 1965, Ch. 254, § 3(5.02); Priv. Acts 1967, Ch. 169, § 15; Ord. No. 10084, § 1(5), 8-16-94; Ord. No. 11011, § 1(3), 5-9-00)

Sec. 3.42. Optional retirement benefits.

(1) Election of optional retirement benefits. A participant entitled to a retirement benefit may elect, subject to written notice of his election filed with or prior to his application for retirement to which the participant may be entitled and subject to such requirements as the trustees may establish, to have a retirement benefit payable under one of the options hereinafter set forth in lieu of all other retirement benefits he is otherwise entitled to receive. The benefit shall be paid in accordance with the terms of the option elected. The participant may revoke his election of an option and make a new election, subject to written notice of his new election filed with or prior to his application for retirement and subject to such requirements as the trustees may establish. Election of any optional retirement benefit shall be approved by the trustees and must be made by the participant in writing in such manner and form as the trustees may require. (Priv. Acts 1965, Ch. 254, § 3(6.01))

(2) Description of optional retirement benefits. The amount of any optional retirement benefit set forth below shall be the actuarial equivalent of the amount of benefit that would otherwise be payable to the retired participant under Article 5 [section 3.41 hereof]; provided, however, that an optional retirement benefit in lieu of the deferred early retirement benefit shall not be less than the benefit that would have been payable if retirement had occurred at the normal retirement date.

OPTION A: 120 PAYMENTS CERTAIN AND LIFE OPTION. A decreased retirement benefit payable for life with the first one hundred twenty (120) payments guaranteed. Any guaranteed payments due after the death of the

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retired participant shall be payable to his designated beneficiary, if any, who survives the retired participant, or to the estate of the retired participant if there is no surviving, designated beneficiary.

OPTION B: JOINT AND SURVIVOR OPTION. A decreased retirement benefit payable to the retired participant for life which shall continue after his death to his surviving beneficiary in the same amount as that payable to the retired participant.

OPTION C: MODIFIED JOINT AND SURVIVOR OPTION. A decreased retirement benefit payable to the retired participant for life, fifty (50) per cent (or some other per cent that is less than one hundred (100) per cent) of which shall continue after his death to his surviving beneficiary for life. (Priv. Acts 1965, Ch. 254, § 3(6.02))

OPTION D: MODIFICATION OF OPTION B. A decreased retirement benefit, subject to an actuarial reduction, payable to the retired participant for life which shall continue after his or her death to their surviving beneficiary in the same amount as that payable to the retired participant provided, that if such designated beneficiary shall predecease the retired participant, the retirement benefit payable to the participant after death of the designated beneficiary, shall be equal to the retirement benefit, which would have been payable had the participant not elected an option. (Ord. No. 10463, § 1(5), 8-20-96)

OPTION E: MODIFICATION OF OPTION C. A decreased retirement benefit, subject to an actuarial reduction, payable to the retired participant for life fifty (50) percent (or some other percent that is less than one hundred (100) percent) of which shall continue after his or her death to their surviving beneficiary for life. Provided, that if such designated beneficiary shall predecease the retired participant, the retirement benefit payable to the participant after death of the designated beneficiary, shall be equal to the retirement benefit, which would have been payable had the participant not elected an option. (Ord. No. 10463, § 1(5), 8-20-96)

(3) In the event of a divorce of a participant who retired under an optional retirement plan, where the spouse is the designated beneficiary, the beneficiary may be cancelled upon the written request of the member and proper documentation, which shall include the final decree and marital dissolution agreement of the parties; provided, that such cancellation is not in conflict with the decree or marital dissolution agreement. The retirement allowance payable to the retiree after the cancellation of the designated beneficiary shall not be affected by such cancellation. (Priv. Acts 1965, Ch. 254, § 3(6.03); Ord. No. 8688, § 1(2)(d), 8-19-86; Ord. No. 10463, § 1(6), 8-20-96)

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Sec. 3.43. Amendment and termination of plan.

In the event that the plan is amended, no such amendment shall cause or permit any part of the plan assets to be used for, or diverted to, purposes other than for the exclusive benefit of the participants and retired participants, or their beneficiaries; no amendment shall have the effect of revesting in the city any portion of such funds; and no amendment, unless it is necessary to meet the requirements of any state or federal law or regulation, shall operate to deprive any participant of any benefits which have vested in him prior to such amendment. (Priv. Acts 1965, Ch. 254, § 3(7.01))

Sec. 3.44. Administration of plan.

(1) Administration. The Board of Trustees of the General pension Plan is hereby expanded to seven (7) members. The Mayor shall be an ex-officio member of the Board of Trustees and shall have the right to vote on all matters. The other six (6) Trustees shall be appointed by the Mayor with the approval of a majority vote of the entire membership of the City Council. (The City Auditor and City Treasurer shall no longer serve as ex officio members of the Board of Trustees.) The Mayor and Council shall ensure in the exercise of their appointment powers as vacancies occur on the Board of Trustees that black representation thereon will be consistent with the percentage of the black population in the City. No person shall be eligible to be a Trustee unless he or she (a) is a trust or investment officer, or has the qualifications of a trust or investment officer as determined from the requirements for those positions by prevailing custom in local government, and among the banks, insurance companies or licensed stock or bond brokers who have offices in Chattanooga, Tennessee, and (b) is a resident of the City of Chattanooga, Tennessee, or is employed within the corporate boundaries of the City of Chattanooga, Tennessee. Of the six (6) appointed members of the Board, no more than two (2) may be employed by the same employer. Two (2) of the members of the Board shall be appointed to initial terms of five (5) years, two (2) of the members shall be appointed to initial terms of four (4) years and two (2) of the members shall be appointed to initial terms of three (3) years. Thereafter, all terms shall be for five (5) years. The City Personnel Director (by whatever title) shall be the keeper of the records of the Board of Trustees.

It shall establish written rules, regulations and procedures to be followed by participants and beneficiaries in filing applications for benefits, in furnishing and verifying proof necessary to determine age, and in any other matters required to administer this plan or as required by law. Before any such rule, regulation or procedure is operative it shall be approved by the city attorney as to legality and form, and shall then be filed with the city finance officer.

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The Board of Trustees shall receive all applications for benefits and shall determine all facts necessary to establish the right of the applicant to benefits under the provisions of the plan and the amount thereof as herein provided, and it will afford any applicant the right of a hearing with respect to any findings of fact or determination.

The Board of Trustees shall prepare and distribute information concerning the plan to the participants at the expense of the fund and in such manner as it shall deem appropriate.

The Board of Trustees shall be entitled to rely upon all tables, valuations, certificates, and reports furnished by a consultant or actuary appointed by it. The trustees may require opinions from the city attorney or any special counsel selected by the city attorney. The board of trustees and the city shall be fully protected in respect of any action taken or suffered by them in good faith in reliance upon the advice or opinion of any such consultant, actuary or [or] counsel, and all action so taken or suffered shall be binding upon each of them and upon all participants or other persons interested in the plan. The trustees shall pay from the fund the fees, charges or expenses for consultant, actuary or said legal services. (Priv. Acts 1965, Ch. 254, § 3(8.01))

Editor's note- The Priv. Acts of 1965 are modified by Paragraph 32 of the Amended Plan appended to the Agreed Order, dated 1-18-90, in the case of Brown v. Board of Commissioners, U.S.D.C., No. CIV-1-87-388.

(2) Records. All acts and determinations of the Board shall be duly recorded and all such records, together with such other documents as may be necessary for the administration of the plan, shall be preserved in its custody and kept by the City Personnel Director. Such records and documents shall at all reasonable times be open for inspection and for the purpose of making copies by any person duly authorized by the Board. (Priv. Acts 1965, Ch. 254, § 3(8.02); Ord. No. 9766, § 1(7), 8-11-92)

(3) Exemption from liability. The members of the Board, and each of them, shall be free from all liability, joint or several, for their acts, omissions and conduct, and for the acts, omissions and conduct of their duly constituted agents, in the administration of the plan, and the city shall indemnify and save them, and each of them, harmless from effects and consequences of their acts, omissions and conduct in their official capacity, except to the extent that such effects and consequences shall result from their own willful misconduct or gross negligence. (Priv. Acts 1965, Ch. 254, § 3(8.03))

Sec. 3.45. Additional rights and powers.

(1) Supplemental contributions. Any person who was an employee on January 1, 1965, upon becoming a participant in this plan, shall be eligible to receive credited service for (a) all of the time he was a participant in a former plan, plus (b) a period of time not to

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exceed ten (10) prior years that he was an employee, whether continuous or not, while a former plan(s) was in force and he was not a participant in such former plan(s); but only if, and on the condition that, he pay to the city before January 1, 1966, such amounts as he would have paid as employee contributions under this plan had it been in existence during such time. The City shall likewise pay into this plan nine per cent (9%) of the gross compensation for the same period of time of said employee who, as aforesaid, shall pay for said past service while not a participant in a former plan(s). (Priv. Acts 1965, Ch. 254, § 3(9.01); Priv. Acts 1967, Ch. 169, § 16)

(2) [Determination of service for charter officials.] With regard only to the computation of benefits as provided in Article 5 [section 3.41 hereof], credited service for the charter officials of the city who are elected by the voters shall mean and be equal to the sum of credited service as defined in Section 1.10 [section 3.37(10) hereof], plus an additional amount of service equal to fifty per cent (50%) of the number or years of service as such official. This credited service also shall apply to such official who is appointed to the city council or to a city judgeship to fill a vacancy. (Priv. Acts 1965, Ch. 254, § 3(9.02); Priv. Acts 1971, Ch. 137, § 7; Priv. Acts 1972, Ch. 403, § 1; Ord. No. 9766, § 1(7), 8-11-92)

(3) Employees who terminated employment under the salaried employees insurance and pension fund prior to the effective date of this plan. In the event that an employee, who was covered by the salaried employees' insurance and pension fund (Private Acts of 1961, Chapter 298), ceased to be employed by the city after December 31, 1965, and was eligible to receive a refund of a portion of his contributions from the aforesaid salaried employees' insurance and pension fund, he shall receive a refund of his total contributions without interest. Such amount shall be deducted and payable from the fund of the salaried employees' insurance and pension fund before any transfer of funds is made to the plan. (Priv. Acts 1965, Ch. 254, § 3(9.03))

(4) Reserved. (Priv. Acts 1965, Ch. 254, § 3(9.04); Ord. No. 8688, § 1(2)(d), 8-19-86)

(4.1) Reserved. (Priv. Acts 1965, Ch. 254, § 3(9.04-A); Priv. Acts 1971, Ch. 137, § 6; Ord. No. 8688, § 1(2)(d), 8-19-86)

(5) Minimum benefit for participants who were participants in a former plan. Notwithstanding any other provision of this plan to the contrary, eligibility for and the amount of benefits under any former plan(s), in which the participant under this plan was a member may be paid in the manner provided for in such former plan(s) if requested by the participant or his beneficiary, but such selection, once made, shall be irrevocable; provided, however, that any person who was under the Department of Education Insurance and Pension Fund Act, and who has elected to become a member of this plan, shall also be eligible for retirement benefits under the salaried employees' insurance and pension fund act if said

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benefits are not less than the benefits under this plan. (Priv. Acts 1965, Ch. 254, § 3(9.05); Priv. Acts 1967, Ch. 169, § 17)

(6) Reserved. (Priv. Acts 1965, Ch. 254, § 3(9.06); deleted by provisions of Ord. No. 9766, § 1(b), 8-11-92)

Sec. 3.46. Trust management.

(1) Establishment of trust. The fund under this plan shall initially consist, as of January 1, 1965, of the current appropriations, if any, and/or the assets less any benefits or expenses incurred between January 1, 1965, and when this Act is ratified, of said existing pension systems whether now open or closed by law, known as-

- (a) Employees' Insurance and Pension Fund (Private Acts of 1937, Chapter 678),
- (b) Department of Education Insurance and Pension Fund (Private Acts of 1937, Chapter 221),
- (c) Salaried Employees' Insurance and Pension Fund (Private Acts of 1961, Chapter 298), and
- (d) Officials Pension System (Private Acts of 1961, Chapter 300),

all as may have been heretofore amended. (Priv. Acts 1965, Ch. 254, § 3(10.01))

(2) Contributions to trustee. Contributions shall be paid to the trustees from time to time in accordance with the terms of this Act. It shall be the duty of the trustees to receive, hold, invest, reinvest and distribute the fund in accordance with the provisions of this Act. The trustees shall be under no duty to enforce payment of any contribution to the fund and shall not be responsible for the adequacy of the fund to meet and discharge any liabilities under this plan. (Priv. Acts 1965, Ch. 254, § 3(10.02))

(3) Management of fund. The trustee shall be authorized and empowered to manage the fund and invest and reinvest the principal and income thereof in its discretion, subject to the terms and provisions of Chapter Two, Chapter Three, Chapter Seven and Chapter Nine of Title Thirty-five of the Tennessee Code Annotated as said statutes now exist or as they may be hereafter amended, repealed or interpreted by the courts. (Priv. Acts 1965, Ch. 254, § 3(10.03))

(4) Disbursements. The trustees shall be authorized to direct the city personnel director to make payments from the fund and shall maintain a written account of all payments from the fund. The trustees shall be fully protected in acting upon any action

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decided up by the board in good faith without inquiry or investigation, and shall have the duty and authority to determine the right or benefits of any employee or beneficiary under the plan. The board of trustees may give directions in writing signed by such person or persons as the trustees may authorize in writing from time to time. (Priv. Acts 1965, Ch. 254, § 3(10.05); Ord. No. 9766, § 1(7), 8-11-92)

(5) Spendthrift clause. Except for obligations which may be owed to the city by an employee at the time of his termination or retirement, no benefit under the plan shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, or charge; and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber or charge shall be void. No such benefit shall in any manner be liable for or subject to the debts, contracts, liabilities, engagements or torts of the person entitled to such benefit except as specifically provided in the plan. (Priv. Acts 1965, Ch. 254, § 3(10.06))

(6) Accounting by trustee. The trustees shall keep accurate and detailed accounts of all investments, receipts, disbursements and other transactions hereunder; and all accounts, books and records relating thereto shall be open to inspection and audit at all reasonable times by any certified public accountant designated by the city council and the expense thereof shall be paid by the city. The city council shall have an annual audit made as aforesaid. (Priv. Acts 1965, Ch. 254, § 3(10.07); Ord. No. 9766, § 1(7), 8-11-92)

(7) Expenses. The expenses incurred by the city in the installation and in the administration of this plan, and the expenses incurred by the trustees in the performance of their duties, and all other proper charges and disbursements of the trustees, shall be paid from the fund unless paid by the city. The compensation of each of the seven (7) trustees for his services as such trustee shall be fixed from time to time by the city council, and paid from the fund. Taxes of any and all kinds whatsoever that might be levied or assessed under existing or future laws upon the fund, or the income thereof, shall be paid from the fund. (Priv. Acts 1965, Ch. 254, § 3(10.08); Ord. No. 9766, § 1(7), 8-11-92)

(8) Resignation and removal of trustee. Any elected trustee may resign at any time upon written notice delivered to the board. Any elected trustee may be removed at any time for cause by the city council upon thirty (30) days' prior written notice delivered to said trustee and after an open hearing. Upon such resignation or removal of any trustee, the Mayor of the city shall, for the unexpired term of such trustee, appoint a successor trustee, subject to the approval of the Council, who shall have the same powers and duties as those conferred upon the trustees hereunder; and, upon acceptance of such election by the successor trustee, the funds and properties then constituting the fund shall thereby automatically be assigned, transferred and paid over to the board of trustees as then constituted. (Priv. Acts 1965, Ch. 254, § 3(10.09); Ord. No. 9766, § 1(7), 8-11-92; § 32 of Court Order in Brown v. Board of Commissioners)

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Sec. 3.47. Miscellaneous.

(1) Headings. The headings and subheadings in this Act [article] have been inserted for convenience of reference only, and are to be ignored in any construction of the provisions hereof. (Priv. Acts 1965, Ch. 254, § 3(11.01))

(2) Construction. In the construction of this Act [article], the masculine shall include the feminine and the singular the plural in all cases where such meanings would be appropriate. The plan shall be construed in accordance with the laws of the State of Tennessee. (Priv. Acts 1965, Ch. 254, § 3(11.02))

(3) Claims. Any payment to or for a participant, retired participant, or beneficiary, or to their legal representatives, in accordance with the provisions of this plan, shall, as to the extent of the method of computation as well as the amount thereof, constitute full satisfaction of all claims arising hereunder against the trustees and/or the city, and the trustees may require such participant, retired participant, or beneficiary or legal representative, as a condition precedent to such payment, to execute a receipt and release therefor in such form as shall be determined by the trustees. (Priv. Acts 1965, Ch. 254, § 3(11.03))

(4) Legally incompetent. If any participant, retired participant, or beneficiary is a minor, or is in the judgment of the trustees otherwise legally incapable of personally receiving and giving a valid receipt for any payment due him hereunder, the trustees may, unless and until claim shall have been made by a guardian or conservator of such person duly appointed by a court of competent jurisdiction, direct that payment or any part thereof be made to such person or to such person's spouse, child, parent, brother or sister, or other person deemed by the board to be a proper person to receive such payment. Any payment so made shall be a complete discharge of any liability under the plan for such payment. (Priv. Acts 1965, Ch. 254, § 3(11.04))

(5) [Vested right based on credited service.] Any participant whose credited service has been five (5) years or more shall not be deprived of a pension if discharged because of a change of administration, political or any other reason. Without prejudice to the foregoing vested right based on credited service, any employee may be discharged for legal cause after charges have been preferred in writing and he has been given a reasonable opportunity to have a public hearing and the charges are sustained by competent evidence. (Priv. Acts 1965, Ch. 254, § 3(11.05); Priv. Acts 1971, Ch. 137, § 3; Ord. No. 10739, § 1(1), 8-18-98)

(6) Correction of errors. If any change in records or error results in any retired participant or beneficiary receiving from the plan more or less than he would have been entitled to receive had the records been correct or had the error not been made, the board,

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upon discovery of such error, shall correct the error by adjusting, as far as practicable, the payments in such a manner that the benefits to which such person was correctly entitled shall be paid. (Priv. Acts 1965, Ch. 254, § 3(11.06))

(7) [Teacher benefits.] A participant in this plan or former plan who is a teacher, whether now retired or who hereafter retires, shall receive an annuity that shall be twice the amount of the actuarial equivalent of his accumulated contributions to this plan plus any amount paid to this plan under Section 49-1542, Tennessee Code Annotated, as amended, or as it may be amended hereafter; but the total amount received from this plan and/or the Tennessee Teachers Retirement System by any such participant who hereafter retires on or after his normal retirement date shall not be less than the retirement benefit payable under Article 4 [section 3.04 hereof] (Benefits); provided, however, that the total amount received by such participant who is now retired from this plan and/or the Tennessee Teachers Retirement System, if any, shall not be less than the amount said participant is receiving from this plan and/or the Tennessee Teachers Retirement System, if any, at the time when this Act shall become operative by ratification by the city council.

As used in the preceding paragraph the following words and phrases shall have the following meaning:

- (a) TEACHER shall mean any person employed in a public school as a teacher, helping teacher, librarian, principal, or supervisor, and shall include any superintendent or administrative officer of the department of education.
- (b) TEACHER ANNUITY shall mean payment for life derived from the accumulated contributions of a participant.
- (c) ACTUARIAL EQUIVALENT shall mean a benefit of equal value when computed upon the basis of mortality tables and rates of interest as shall be adopted by the board of trustees.
- (d) ACCUMULATED CONTRIBUTIONS shall mean the sum of all the amounts deducted from the compensation of a participant together with interest compounded annually at the rate of three per cent (3%). (Priv. Acts 1965, Ch. 254, § 3(11.07); Priv. Acts 1971, Ch. 137, § 2; Ord. No. 9766, § 1(7), 8-11-92)

(8) [Rights of survivors to pension.] Should any participant die as a result of any medically determinable bodily injury, disease or condition resulting, directly or indirectly, from an act occurring, or a thing done, or a known or unknown risk taken in the performance of his duty with the city and shall be survived by a spouse, then his or her spouse shall receive the pension to which such deceased participant would have been entitled as if he had

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retired at age sixty-two (62) with twenty-five (25) years credited service so long as she remains his or her spouse and does not re-marry; if not survived by a spouse but is survived by a child or children under twenty-one (21) years of age, or if the spouse of such deceased participant should thereafter leave a surviving child or children of the deceased participant under twenty-one (21) years of age, the child shall receive said pension until he reaches the age of twenty-one (21) years or said children shall receive a pro rata amount of said pension until each becomes twenty-one (21) years of age. As each surviving child reaches age twenty-one (21), the pension shall be reapportioned among the then living children under age twenty-one (21). Further, in the event such participant is not survived by a spouse, or child or children under twenty-one (21) years of age, but is survived by a parent(s) solely dependent on the deceased participant, the parent(s) shall receive the pension to which a spouse would have been entitled as aforesaid so long as there is no other means of support. (Priv. Acts 1965, Ch. 254, § 3(11.08); Priv. Acts 1971, Ch. 137, § 4; Priv. Acts 1972, Ch. 402, § 2; Ord. No. 10739, § 1(1), 8-18-98; Ord. No. 11011, § 1(10), 5-9-00)

Sec. 3.48. Other pension systems closed to new employees.

Upon the date when this Act is ratified by the board of commissioners of the City of Chattanooga the pension systems known as Employees' Insurance and Pension Fund (Private Acts of 1937, Chapter 678), Salaried Employees' Insurance and Pension Fund (Private Acts of 1961, Chapter 298), and Officials Pension System (Private Acts of 1961, Chapter 300), shall be closed to all persons now or thereafter employed by the city who would otherwise have been eligible to participate therein, but the foregoing provision closing said pension systems to all future employees or elected officials, as the case may be, shall not effect or impair the right of any person who may now or hereafter receive a retirement or a full or disability pension therefrom. (Priv. Acts 1965, Ch. 254, § 4)

Editor's note-The acts referred to in the above subsection are not included in this compilation, since they are closed to future employees.

Sec. 3.49. Amendment to Ch. 73, Priv. Acts 1959; effect of plan thereon.

Chapter 73 of the 1959 Private Acts, the title of which is set forth in the caption hereof, shall apply to this plan, and the age of children specified in said Act as being "sixteen (16) years of age" shall be changed, amended, or deleted and the words and figures "eighteen (18) years of age" shall be substituted in lieu thereof wherever they appear in said Chapter 73, Private Acts of 1959, but this amendment shall not affect or impair the existing right of any person who is receiving benefits provided under said 1959 Act. (Priv. Acts 1965, Ch. 254, § 5)

Editor's note-Ch. 73, Priv. Acts 1959, is set out as § 3.29 of this compilation. The caption of Priv. Acts 1965, Ch. 254, which comprises this division, is not set out in this compilation.

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Sec. 3.50. Repeal of Ch. 397, Priv. Acts 1961.

Chapter 397, Private Acts of 1961, the title of which is set forth in the caption hereof, be and the same is hereby repealed, but this repeal shall not affect or impair the existing right of any person who is now receiving the benefits provided by said Act to continue to receive benefits under said Act. (Priv. Acts 1965, Ch. 254, § 6)

Editor's note-The caption to Priv. Acts 1965, Ch. 254, which comprises this division, is not set out herein. Ch. 397, Priv. Acts 1961 is not set out in this compilation.

Sec. 3.51. Deferred reitirement option plan.

That the City Council upon recommendation of the Board of Trustees and advice by the mayor may by ordinance adopt a Deferred Retirement Option plan providing alternative benefits for up to three (3) years of credited service providing those optional benefits shall not exceed the benefits the employee would have otherwise received. (Ord. No. 11011, § 1(11), 5-9-00)

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Sec. 3.52. Amendments by ordinance.

The City Council of the City of Chattanooga, in its discretion, may upon recommendation of the Board of Trustees, upon advice by the Mayor, and upon receipt of an actuarial report as to the costs and actuarial soundness of such changes, may amend by ordinance passed on three separate readings the provisions of the General Pension Plan providing that such amendments are consistent with sound actuarial principles, methods, and assumptions and further provided that such amendments shall not decrease any vested financial benefits accrued by any participant or beneficiary. (Ord. No. 11011, § 1(12), 5-9-00)

Secs. 3.53 – 3-60. Reserved.

CHAPTER IV. CITY ATTORNEY⁴

Sec. 3.61. Qualifications.

The city attorney shall be a practicing attorney of at least one year's standing in Chattanooga. (Priv. Acts 1901, Ch. 432, § 82; Priv. Acts 1911, Ch. 126, §§ 1,2; Priv. Acts 1919, Ch. 76; Priv. Acts 1968, Ch. 468, § 1)

Editor's note-Chapter 476, Priv. Acts 1968, codified as § 3.1.1, pertaining to residence and voting qualifications of city employees and appointed officers, repealed conflicting prior acts, therefore the editors at the direction of the city, deleted from § 3.61 the former second sentence which read: "No person shall be eligible to the office of city attorney unless he shall have been for at least one year next before his election a citizen of Tennessee and a resident of said city".

Cross reference-Residence and voting qualifications, § 3.3.1.

Sec. 3.62. Appointment by mayor and council.

The mayor and the council shall each have the right to retain independent separate attorneys, from time-to-time. No later than the date the mayor appoints department heads, the mayor and council shall jointly appoint a city attorney for a term concurrent with the term of the mayor, and until he is discharged or his successor is appointed and qualified. The city attorney may be removed from office at any time by the affirmative vote of two-thirds of the

⁴**Cross references**-Minimum salary of city attorney, § 3.6; delinquent tax attorney, § 6.35 et seq.; general counsel of the electric power board, § 10.24 et seq.; duties of city attorney pertaining to removal of electric power board members, § 10.29.

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entire membership of the city council, and the concurrence of the mayor. Any vacancy occurring in said office shall be filled by joint appointment of the mayor and the council. (Ord. No. 9439, § 1(2), 8-2-90)

Sec. 3.63. Duties generally.

It shall be the duty of the city attorney to give legal advice to the mayor and city council, and all other officers and boards of the city in the discharge of their official duties. If required, he shall give his opinions in writing, and they shall be preserved for reference. It shall be his duty to prosecute or defend all suits for or against the city and to attend to such other legal business as may be prescribed by the mayor and/or city council. It shall also be his duty, either in person or by an assistant, to appear and prosecute cases in the city court when called upon by the mayor or any council member or the city judge. He shall prepare all contracts, bonds and instruments in writing when called upon by the mayor or any council member. He shall give his first time and attention to the city's legal business. (Priv. Acts 1935, Ch. 687, § 2)

(Paragraph 3 of the Amended Plan appended to the Agreed Order, dated 1-18-90, in the case of Brown v. Board of Commissioners, U.S.D.C., No. CIV-1-87-388 and Ord. No. 9439, § 1(2), 8-2-90, see Sec. 3.62 and 3.79 §13d of Ct. Order.

Sec. 3.64. Reserved.

(Ord. No. 10745, § 1(2), 8-18-98)

Sec. 3.65. Reserved.

(Ord. No. 10745, § 1(1), 8-18-98)

Secs. 3.66 -- 3.75. Reserved.

CHAPTER V. SUBORDINATE OFFICERS, EMPLOYEES AND LABORERS

ARTICLE 1. GENERALLY

Sec. 3.76. Reserved.

(Ord. No. 10745, § 1(1), 8-18-98)

Sec. 3.77. Reserved.

(Ord. No. 10745, § 1(1), 8-18-98)

Sec. 3.78. Reserved.

(Ord. No. 11018, § 1(1), 5-16-00)

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Sec. 3.79. Discharge and appeal therefrom.

All officers, agents and employees whose employment and employment rights are not otherwise specifically governed in this Charter, whether the same be under the administrative and executive branch, or under the legislative or judicial branches, shall be subject to discharge by the authority which appointed them, but any such officer, agent, or employee so discharged shall have the right of appeal of any disciplinary discharge.

The city council is authorized to establish from among its members a committee or committees to hear such appeals or, if no such committees are established, shall hear such appeals itself. The committees shall have the right to determine whether such discharge shall be effective, the discharged person be reinstated or to otherwise modify the order of discharge. The committees shall consist of no less than three members of the city council. (Ord. No. 9437, § 1(2), 8-21-90)

Secs. 3.80 -- 3.86. Reserved.

Editor's note-Former Sections 3.79 through 3.86 were repealed by Ord. No. 9437, § 1(2), 8-21-90.

Sec. 3.87 -- 3.89. Reserved.

Editor's note-Former Sections 3.87 through 3.89 were repealed by Ord. No. 10745, § 1(1), 8-18-98)

Secs. 3.90 -- 3.94. Reserved.

ARTICLE 2. CITY FINANCE OFFICER

Sec. 3.95. Qualifications.

No person shall be eligible to the office of finance officer if he shall hold any civil office under the federal, state or county government. (Priv. Acts 1901, Ch. 432, § 4; Priv. Acts 1968, Ch. 476, § 1; Ord. No. 10742, § 1(1), 8-18-98)

Cross reference-Residence and voting requirements, § 3.1.1.

Sec. 3.96. Duties generally.

The City Finance Officer of the City of Chattanooga shall be the general accounting and chief fiscal officer of the City. Additionally the City Finance Officer shall:

1. Maintain accounting and financial reporting records in accordance with standards and procedures established by the State of Tennessee.

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2. Ensure that City funds are expended as appropriated by the City Council and that no expenditures are made in excess of the amount previously appropriated.
3. Perform such other duties as may be imposed upon him by other provisions of the Charter or by ordinance of the City.
4. Maintain and be the custodian of the City's official records, except when another custodian for specific records is designated by Charter or ordinance.
(Priv. Acts 1953, Ch. 105, § 2; Ord. No. 10742, § 1(2), 8-18-98)

Secs. 3.97 -- 3.101. Reserved.

ARTICLE 3. CITY TREASURER

Sec. 3.102. Qualifications.

No person shall be eligible to the office of treasurer if he shall hold any civil office under the federal, state or county government. (Priv. Acts 1901, Ch. 432, § 4; Priv. Acts 1968, Ch. 476, § 1)

Editor's note-Chapter 476, Priv. Acts 1968, pertaining to residence and voting requirements of city employees and appointed officials, (codified as § 3.1.1) repealed all conflicting prior acts, therefore the editors, at the direction of the city, deleted from § 3.102 the words "unless he shall be a bona fide resident and voter of Chattanooga, or" formerly appearing following the word "treasurer".

Cross reference-Residence and voting requirements, § 3.1.1.

Sec. 3.103. To serve as tax collector; duties generally.

The city treasurer shall act as tax collector. He shall collect all ad valorem taxes, privilege and other licenses. It shall be the duty of the city treasurer to receive and safely keep all taxes, privilege or other moneys due the city and receipt for the same; to keep a strict account of the same, and to pay same out on warrants drawn by the city City Finance Officer. For all moneys paid into the treasury the treasurer shall execute duplicate receipts-one for the party paying and one for the city finance officer. His books shall at all times be open to the inspection of the mayor, city finance officer or any member of the city council. He shall report at the close of business each day to the city finance officer the balance in the treasury. He shall perform such other duties as may be imposed upon him by the provisions of the charter or ordinances of the city.

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Receipts for the payment of taxes shall be recorded in a stub book kept for that purpose, filed with the City Finance Officer.

The city treasurer shall make a report of the condition of the treasury, which shall be addressed to the Mayor and City Council of the City of Chattanooga, and be submitted to them at the last regular meeting of said board in December of each year. Said report shall be verified by the treasurer, under oath, and shall show: 1st. The amount of money received for taxes upon lands and town lots; 2nd. The amount of money received for license and special taxes of all kinds; 3rd. The amount of money received from other sources; 4th. The total receipts; 5th. Items of expenditures; 6th. Aggregate expenditures; 7th. Balance on hand; 8th. Amount due the city from all sources. The report of the treasurer shall be published six times in one of the city papers. Said treasurer shall turn over to his successor in office, or when such successor shall be elected and qualified, all books, papers, moneys, creditors or other property or evidence of indebtedness, pertaining to his said office. (Priv. Acts 1866-67, Ch. 8, § 21; Priv. Acts 1901, Ch. 432, § 71; Priv. Acts 1901, Ch. 495, § 4; Priv. Acts 1911, Ch. 10, § 13; Priv. Acts 1919, Ch. 548; Priv. Acts 1953, Ch. 105, § 3) (§13b of Court Order.

(Paragraphs 3 and 13b of the Amended Plan appended to the Agreed Order, dated 1-18-90, in the case of Brown v. Board of Commissioners, U.S.D.C., No. CIV-1-87-388)

Cross reference-For city taxes generally, see § 6.15 et seq.

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Sec. 3.104. Oath and bond.

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Before entering upon his duties, the city treasurer shall take and subscribe an oath faithfully, honestly and impartially to discharge the duties of said office, and shall give bond with good and sufficient sureties, approved by the City Council, payable to the City of Chattanooga, conditioned upon the faithful, honest and lawful discharge of his office; and when said bond has been accepted by the board, it, together with the oath herein prescribed, shall be filed by the city clerk. The bond of the treasurer shall be for the sum of twenty thousand dollars (\$20,000.00). (Priv. Acts 1866, Ch. 8, § 19; Priv. Acts 1911, Ch. 10, § 13)

(Paragraph 4 of the Amended Plan appended to the Agreed Order, dated 1-18-90, in the case of Brown v. Board of Commissioners, U.S.D.C., No. CIV-1-87-388)

Sec. 3.105. Assistant city treasurer to sign checks when treasurer disabled or absent.

The charter of the City of Chattanooga, Tennessee, and all acts amendatory thereof, be, and the same are, hereby amended so as to authorize the assistant city treasurer to sign checks for and on behalf of the city in the event the city treasurer is absent or disabled. (Priv. Acts 1945, Ch. 284, § 1)

Secs. 3.106 -- 3.110. Reserved.

ARTICLE 4. CITY ENGINEER

Sec. 3.111. Duties.

Under the direction of the Mayor for engineering work in in all departments, , the city engineer shall have full and exclusive charge of all the engineering work of all the departments of said city, in any way or for any purpose requiring the service of a civil engineer. (Pub. Acts, 2d Sess., 1890, Ch. 1, § 23; Priv. Acts 1911, Ch. 10, §§ 13, 17, 20; Priv. Acts 1955, Ch. 56, § 1) (Paragraph 3 of the Amended Plan appended to the Agreed Order, dated 1-18-90, in the case of Brown v. Board of Commissioners, U.S.D.C., No. CIV-1-87-388)